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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,992	03/19/2004	Thorsten Heinz	SCH00174	8937
22862	7590	03/22/2010		
GLENN PATENT GROUP 3475 EDISON WAY, SUITE L MENLO PARK, CA 94025			EXAMINER YIP, JACK	
			ART UNIT 3715	PAPER NUMBER
			NOTIFICATION DATE 03/22/2010	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

eptomatters@glenn-law.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/804,992

Applicant(s)

HEINZ ET AL.

Examiner

JACK YIP

Art Unit

3715

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 February 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-21, 23 and 24.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/XUAN M. THAI/

Supervisory Patent Examiner, Art Unit 3715

Continuation of 11, does NOT place the application in condition for allowance because:

According to MPEP 2111 [R-5], during patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification." The Federal Circuit's en banc decision in *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) expressly recognized that the USPTO employs the "broadest reasonable interpretation" standard.

Applicant states that Holton does not disclose "an inner hair cleft contents map over time" as the Examiner contends on page 2, penultimate paragraph of the Office Action. The examiner respectfully disagrees. Holton explicitly states (Holton, col 4, lines 36 - 44) "Sound is analyzed using a model of the human cochlea which simulates the waveform propagation characteristics of the basilar membrane. Our preferred model is implemented as an array of filters, the frequency and phase response of each of these filters being chosen to substantially match waveform propagation characteristics at equally spaced haircell locations along the length of the basilar membrane of the cochlea (highlight added)." Holton further states (Holton, col9, lines 60 - 68; col 10, lines 1 - 10; col 5, lines 1 - 29) "The response sequences computed from the array of filters are then processed by an array of primary feature detectors which are designed to emulate the signal processing characteristics of cells in the brainstem and auditory cortex... the term "local" means that each primary feature detector in the array detects only patterns of the response of filter channels over a restricted range of channels and over a restricted interval of time." Holton further states (Holton, Abstract) "Each output waveform corresponds to excitation at different locations along the basilar membrane in the cochlea (highlight added), and matches the narrow frequency bandwidth, short time response, and wave propagation characteristics of the human cochlea." Therefore, Holton's waveforms are capable of estimating an inner hair cleft contents map over time.

Applicant further states that Holton also does not disclose a pitch analyzer for analyzing the cleft contents map, because Holton is completely silent on a cleft contents map. As the examiner stated on the previous office action, Pitch by definitions (www.answers.com/topic/pitch): "The distinctive quality of a sound, dependent primarily on the frequency of the sound waves produced by its source." Therefore, both Holton (Holton, figs 2A - 2B, 9, 11, 14, 16) and Ren (Ren, figs 14 - 16) teach a pitch analyzer which analyzes the frequency of a sound wave. Holton also states (Holton, Abstract) "Each output waveform corresponds to excitation at different locations along the basilar membrane in the cochlea and matches the narrow frequency bandwidth, short time response, and wave propagation characteristics of the human cochlea." Holton shows a pitch line varies in time over high frequencies and lower frequencies (i.e. Holton, figs 2A - 2B, "Channel Center Frequency (Hz) 250 - 3400 Hz")

Applicant further states it makes no sense to Combine Ren with Holton. A sound spectrum in Ren does not make any sense." Since Holton states (Holton, Abstract) "Each output waveform corresponds to excitation at different locations along the basilar membrane in the cochlea (highlight added)...", therefore, one of an ordinary skill in the art would provide a 3D sound spectrum as taught by Ren for better visualization of audio spectrum. .